



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/358,280	07/21/99	UTTER	MISTY-52064

QM02/1004

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EXAMINER
WELDON, K

ART UNIT	PAPER NUMBER
3752	2

DATE MAILED: 10/04/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

358280

Applicant(s)

Jffer

Examiner

K Weldon

Group Art Unit

3752

☒ Responsive to communication(s) filed on

7/21/99

☐ This action is FINAL.☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire Three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-4 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.☒ Claim(s) 1-4 is/are rejected.☐ Claim(s) _____ is/are objected to.☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.☐ The drawing(s) filed on _____ is/are objected to by the Examiner.☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.☐ The specification is objected to by the Examiner.☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been☐ received.☐ received in Application No. (Series Code/Serial Number) _____☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____☐ Interview Summary, PTO-413☒ Notice of Draftsperson's Patent Drawing Review, PTO-948☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3752

1. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 1 the applicant recites "a misting apparatus, which consists ..." causing uncertainty. Does applicant consisting? Does applicant mean comprising?

In claim 2 lines 2-3 the phrase "fanny pack style bag to allow wearing of the devices or uses a belt like strap without a bag" is considered to be indefinite. These are two different embodiments? How can a strap contain water? The words "like" and "style" are considered to be indefinite as the scope of these terms cannot be ascertained. Further, what is "the same end result" lines 2-3? What result?

The phrase "the device" in claim 3 line 2 lacks proper antecedent basis.

The claims have been examined as best understood by the examiner.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CAR 3.73(b).

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Chow.

The Chow patent discloses a misting apparatus including a "mist" nozzle (column 4 line 19), an air pump 26, container 10 and valve 36 for controlling the spraywand 32.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chow in view of Carter.

It is deemed to have been obvious to one of ordinary skill in the art to substitute a fanny pack liquid container as taught by Carter for the container in Chow as it is more convenient less strenuous to use than the cumbersome tank in Chow.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chow in view of Jahraus.

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The Jahruas patent discloses a spry system having a plurality of spray wands that are belted onto a person. The spray wands are held in position by clips 27. It is deemed to have been obvious to one of ordinary skill in the art to incorporate clips as taught by Jahraus to permit hands free operation of Chow's sprayer.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Charpiat is cited for its clip 38. Scott is cited for its fanny pack in figure 1. Chaudoir and Alliene are cited for hands free operation. Bailey is cited for it spray wand. Beuchamp and Whiteford are cited for their nozzle directing means.

9. Claims 1-4 are rejected under the judicially created doctrine of double patenting over claims 4 and 9 of U. S. Patent No. 5620140 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The present claims are broader in scope than the detailed ds US patent '140 claims. It is deemed to have been obvious to one of ordinary skill in the art that a simpler less complicated misting apparatus with less structural elements would be useful operative and less expensive to construct. Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the

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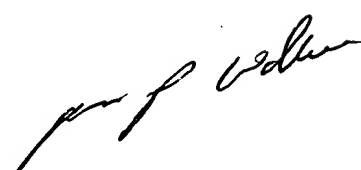
application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

10. The drawings are objected to under 37 CFR 1.83(a) because they fail to show a fanny pack style bag to allow wearing of the devices or uses a belt like strap without a bag as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Correction is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Weldon whose telephone number is (703) 308-1117. The examiner can normally be reached on Tues-Fridays from 7 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andres Kashnikow, can be reached on (703) 308-1137. The fax phone number for this Group is (703) 308-7764.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703)308-0861.



Kevin Weldon
Primary Examiner